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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,340	01/21/2004	W. Daniel Hillis	0803-001-004-000000	5765

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EXAMINER

MARTINEZ, JOSEPH P

ART UNIT	PAPER NUMBER
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2873

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/764,340

Applicant(s)

HILLIS ET AL.

Examiner

Joseph P. Martinez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-22 is/are allowed.
- 6) ☒ Claim(s) 23-44 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9-21-06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Terminal Disclaimer*

The terminal disclaimer filed on 8-11-06 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,967,780 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### *Double Patenting*

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

1. Claims 23-30, 32 and 36-44 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 22-29, 33 and 35-43 of prior U.S. Patent No. 6,967,780. This is a double patenting rejection.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 31 and 33-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,967,780.

Re claim 31, the conflicting claims are not identical, they are not patentably distinct from each other because the office interprets "capturing another image" of claim 1 of U.S. Patent No. 6,967,780 to inherently include "means for capturing the other image."

Re claims 33 and 35, the conflicting claims are not identical, they are not patentably distinct from each other because the office interprets "capturing another image with at least one microlens of the microlens array at another position" of claim 1 of U.S. Patent No. 6,967,780 to inherently include a "means for moving the at least a part of the lens to another position" or "means for distorting the microlens array such that the at least a part of the microlens array resides at the other position."

Re claim 34, the conflicting claims are not identical, they are not patentably distinct from each other because the office interprets "capturing another image with at

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least one microlens of the microlens array at another position" of claim 1 of U.S. Patent No. 6,967,780 to inherently include a "means for moving an intermediary lens" (e.g., microlens).

**Allowable Subject Matter**

Claims 1-22 are allowed.

The following is an examiner's statement of reasons for allowance: the prior art taken alone or in combination fails to anticipate or fairly suggest the limitations of the claims, in such a manner that a rejection under 35 USC 102 or 103 would be proper. The prior art fails to teach a combination of all the claimed features as presented in independent claim 1.

Specifically regarding claim 1, Javidi (20020114077) teaches the state of the art of imaging with digital reconstruction.

But, Javidi fails to explicitly teach the microlens array having at least one microlens deviation that exceeds a first tolerance from a target optical property, and capturing another image with at least one microlens of the microlens array at another position, as claimed.

Specifically regarding claim 1, Meier (6088083) teaches the state of the art of optical imaging recording.

But, Meier fails to explicitly teach the microlens array having at least one microlens deviation that exceeds a first tolerance from a target optical property and determining a focus of at least one region of the other image relative to focus of the at least one out-of-focus region of the primary image, as claimed.

As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

Applicant's arguments filed 8-11-06 have been fully considered but they are not persuasive.

Re applicant's arguments on p. 6-7, wherein the applicant argues that U.S. Patent 6,967,690 discloses a different means for moving the microlens array, have been considered, but are not persuasive. 35 U.S.C. 112 Sixth Paragraph states that a claim limitation expressed in means-plus-function language "shall be construed to cover the corresponding structure...described in the specification and equivalents thereof." The

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office interprets the controller in Fig. 4 of the instant application and the controller in U.S. Patent 6,967,780 to be equivalents thereof. More specifically, the office interprets the controller (detailed in fig. 4 and p. 7, paragraph 2) of the instant application as the "means for" moving the microlens array to be equivalent to the controller (detailed in fig. 4 and col. 7, ln. 15-37) of U.S. Patent 6,967,780 as the "means for" moving at least one microlens of the microlens array.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph P. Martinez whose telephone number is 571-272-2335. The examiner can normally be reached on M-F 7:00 AM to 3:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JPM  
10-26-06



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